

E-FILED on 12/17/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARLO CUSTODIO, et al.,

Plaintiffs,

v.

THE COUNTY OF SANTA CLARA,  
CALIFORNIA, et al.,

Defendants.

No. C 09-0527 RMW

ORDER RE DEFENDANT COUNTY OF  
SANTA CLARA'S MOTION TO SEVER  
CLAIMS AND PLAINTIFF'S EX PARTE  
APPLICATION TO STAY PROCEEDINGS**[Re Docket No. 33]**

On December 4, 2009, the court heard plaintiffs' ex parte application to stay proceedings and Defendant County of Santa Clara's motion for an order severing the claims asserted against it and allowing the claims to proceed against it. All defendants other than the County of Santa Clara agree to the proposed stay; the County, however, opposes a stay. The County instead seeks severance of plaintiffs' claims against it and to be allowed to proceed with its defense of those claims. Plaintiffs oppose the County's motion to sever. Defendant City of San Jose and the individual San Jose Police Officer defendants did not file any papers in connection with the County's motion, nor did they appear at the hearing on this matter. Having considered the papers submitted by the parties and the arguments of counsel at the hearing, and for good cause appearing, the most equitable and efficient way to proceed is to allow discovery to go forward in this case, but also to stay trial of the claims

1 against the City of San Jose and the San Jose Police Officer defendants, at least until the underlying  
2 appeals of the criminal convictions are complete. At this point, the court is not inclined to stay trial  
3 of the claims against the County, but is willing to revisit this issue following completion of  
4 discovery, depending on the status of the proceedings in the underlying criminal appeal.

5 Accordingly, plaintiffs' ex parte application to stay is granted in part, and trial against the  
6 City of San Jose and the San Jose Police Officer Defendants is stayed. In all other respects,  
7 plaintiffs' application is denied. Defendant Santa Clara County's motion to sever is granted so that  
8 discovery on all claims may proceed. Trial of the claims against the County shall not be stayed  
9 without further order of the court following close of discovery.

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13 DATED: 12/16/09



RONALD M. WHYTE  
United States District Judge

1 Notice of this document has been electronically sent to:

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16 Counsel are responsible for distributing copies of this document to co-counsel that have not  
17 registered for e-filing under the court's CM/ECF program.

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19  
20 **Dated:** 12/17/09

TER

21 **Chambers of Judge Whyte**